In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-116

ROBERT B. RAGLAND, PETITIONER

v.

JOHN A. VOLPE,
SECRETARY OF TRANSPORTATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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1. Petitioner filed this action against the Secretary of Transportation and the Federal Highway Administrator to enjoin the allotment to the State of Florida of all federal funds under Section 108(b) of the Federal-Aid Highway Act. Petitioner alleged that such allotment violated the provision of the Act, 23 U.S.C. 127, which forbids federal funds to be appropriated for any fiscal year under Section 108(b)

to any State in which the Interstate Highway System may be used by vehicles exceeding certain specified weight limitations, since 42 miles of the Sunshine State Parkway may be used by tandem trailer trucks of a weight in excess of the specified weight limitations (Pet. App. 23-30).

The district court granted defendants' motion to dismiss for failure to state a claim upon which relief can be granted and lack of petitioner's standing. The court of appeals unanimously affirmed *per curiam* for lack of standing (455 F. 2d 992).[1]

2. In *Sierra Club* v. *Morton*, 405 U.S. 727, this Court dismissed for lack of standing a complaint which alleged that agency action was unlawful but did not allege that plaintiff had sustained an individualized injury. The Court emphasized that under the "injury in fact" test of standing it is not sufficient that plaintiff has an "interest in a problem"—"It requires that the party seeking review be himself among the injured." *Id.* at 734, 735, 739. He "must allege facts showing that he is himself adversely affected." *Id.* at 740. In the instant case, petitioner did not meet the "injury in fact" test specified by this Court in the *Sierra Club* case, and, therefore, the courts below correctly dismissed petitioner's suit for lack of standing.

Petitioner's complaint alleged that he is a member of a class "of millions of citizens of the State of

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[1] The court of appeals denied a petition for rehearing on April 26, 1972. A timely petition for certiorari was filed July 21, 1972.

Florida" who have a common interest in "the use, or potential use, of" the Interstate Highway System of the State of Florida, and "a direct interest in the enforcement of" 23 U.S.C. 127 (Pet. App. 24-25).[2] The complaint, however, did not allege that petitioner himself travels on or lives near the Sunshine State Parkway; or that the use of the Parkway by tandem trailers affects or injures the petitioner personally.[3] Thus, petitioner's complaint fails to allege that petitioner himself has a direct stake in the litigation, or has sustained an injury. Absent such a showing of "individualized injury" and "that he is himself adversely affected," petitioner does not satisfy the "injury in fact" test enunciated in the *Sierra Club* case.[4]

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[2] The complaint also referred to petitioner's status as a federal taxpayer (Pet. App. 24). However, petitioner has now expressly abandoned any claim to standing on that basis (Pet. 12-13).

[3] The petition for a writ of certiorari states that petitioner is a "user of The Interstate System segment in dispute" (Pet. 11). The complaint, however, makes no such allegation, and petitioner did not amend his complaint, although in the grant of the motion to dismiss, the district court gave him permission to do so (Appendix in court of appeal, p. 20). Cf. the complaint's general allegation that "Plaintiff, and others too numerous to mention, have been subjected to the dangers of tandem-trailer traffic and have seen their state tax monies expended * * *" (Pet. App. 29).

[4] Petitioner has filed other lawsuits for the purpose of halting the construction of an entirely different road, Interstate 295, through his property in Duval County, Fla. *Ragland* v. *Mueller*, C.A. 5, No. 71-2430, decided May 31, 1972; *Ragland* v. *State of Florida Department of Transportation*, 242 So. 2d 475 and 261 So. 2d 215. Petitioner's objective of preventing

3. *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, held that standing to challenge agency action requires not only "individualized injury," but also that the interest injured "is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Id.* at 153. Petitioner fails the "zone of interest" test also. The basic purpose of the Federal-Aid Highway Act is to stimulate and accelerate construction of the federal-aid highway system by offering federal aid to state and local bodies which construct these approved highways. See *Mahler* v. *United States*, 306 F. 2d 713 (C.A. 3). The specific purpose of 23 U.S.C. 127 is to protect the Federal investment in the interstate system against damage caused by heavy loads on the highway. See H. Rep. No. 2022, 84th Cong., 2d Sess., p. 10 (1956).[5]

I-295 from passing through his property might well be advanced if he could succeed, through the instant litigation, in cutting off all federal funds to Florida's highway program. Petitioner's complaint, however, does not contend that his property interest in Duval County bears any relationship to the Sunshine State Parkway or to the legal issues raised by the instant litigation.

[5] This Report states:

> * * * [M]aximum weight limitations for vehicles using the highways are fundamentally a problem of State regulation, but * * * if the Federal Government is to pay 90 percent of the cost of Interstate System improvements it is entitled to protection of the investment against damage caused by heavy loads on the highway. * * *

In the instant case, however, the Sunshine State Parkway became part of the Interstate Highway System solely by vir-

This Act leaves to Florida authorities the responsibility for the safety of the Sunshine State Parkway. It is to such authorities, therefore, that petitioner must present his claims concerning the dangers of permitting tandem trailer trucks on the Parkway.[6]

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

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tue of its designation under 23 U.S.C. 129(b), which authorizes the approval of toll roads as part of the interstate system to "promote the development of an integrated Interstate System" and which generally provides that "No Federal-aid highway funds shall be expended for the construction, reconstruction or improvement" of a toll road so designated (see Pet. App. 26).

[6] The Florida courts have recognized the authority of the Florida State Turnpike Authority to adopt the specific weight limitations in question here. *Daniel* v. *Florida State Turnpike Authority*, 213 So. 2d 585; *Daniel* v. *Florida State Turnpike Authority*, 237 So. 2d 222, certiorari denied, 240 So. 2d 637. The Florida State Department of Transportation has, however, announced plans to terminate its authorization of the use of the Parkway by the trucks in question on July 1, 1973. See the attached affidavit and letters.

IN THE
SUPREME COURT OF THE UNITED STATES

No. 72-116

ROBERT B. RAGLAND, PETITIONER

—*vs*—

JOHN A. VOLPE, as Secretary of Transportation of the United States, and FRANCIS C. TURNER, as Federal Highway Administrator, RESPONDENTS

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF LEON)

BEFORE ME, the undersigned officer, duly authorized to take oaths and acknowledgments, personally appeared LAVORIS KIRKLAND who, after by me first being duly sworn and cautioned, deposes and says: that the attached letter dated May 18, 1972, addressed to Mr. T. Bruce Tyndall and signed by Tom Webb, Jr., is a true and correct copy of an original carbon copy in her custody and control and maintained by her as a part of the official business records of the State of Florida Department of Transportation; that the attached letter dated May 11, 1972, addressed to Mr. Marvin L. Holloway on the letterhead of the Office of the Governor is a true and

correct copy of a carbon copy of the original received by the Secretary of Transportation and is in her custody and control as a part of the official records of the State of Florida Department of Transportation.

Further affiant sayeth not.

/s/ Lavoris Kirkland
LAVORIS KIRKLAND

Sworn to and subscribed before me
this 8 day of August, A. D., 1972.

/s/ [Illegible]
Notary Public
State of Florida at Large

My Commission Expires April 29, 1976

[SEAL]

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

May 18, 1972

Mr. T. Bruce Tyndall
President
Florida Trucking Association, Inc.
704 Gilmore Street
Jacksonville, Florida 32204

Dear Mr. Tyndall:

I am instructed by Secretary Mueller to advise the trucking firms and your organization that tandem trailers presently operating on the Florida Turnpike will not be permitted to continue operation after July 1, 1973.

The Department will advise, by registered letter, each current operator. In consideration of the substantial investment and special equipment for this operation, we have set the termination date as far forward as practical.

Sincerely yours,

/s/ Tom Webb, Jr.
TOM WEBB, JR.
Director of Administration

TWjr:lk

To:

Super Food Services
2002 Directors Row
Orlando, Florida
Attention: Mr. William Wannstede

Ryder Truck Lines
Jacksonville, Florida
(No name)

Terminal Transport Lines
248 Chester Avenue S. E.
Atlanta, Georgia
(Mr. R. V. Gadd)

Alterman Transport Lines
2424 N. W. 46th Street
Miami, Florida
(No name)

Howard Fertilizer Co.
Post Office Box 13800
Orlando, Florida
Attention: Mr. Bobby Howard

Minute Maid
(Coca Cola Company—Food Division)
Auburndale, Florida
Attention: Mr. Jim McClenney

Southland Distribution Center
1950 Sand Lake Road
Orlando, Florida
Attention: Mr. Joe Pastore

U. S. Concrete & Pipe Company
Highway 441 South
Ocala, Florida
Attention: Mr. Herb Cotton

S. Malatesta & Sons
2498 West 8th Court
Miami, Florida
Attention: Mr. Andy Malatesta

STATE OF FLORIDA

OFFICE OF GOVERNOR REUBIN O'D. ASKEW

May 11, 1972
Mr. Marvin L. Holloway
Florida Conference of AAA
Motor Clubs
Post Office Box 22087
Tampa, Florida 33622

Dear Mr. Holloway:

Please excuse the long delay in answering your letter concerning the operation of double-bottom trucks on Florida's turnpike. I had the Department of Transportation do considerable research on this question and that is the reason for the delay.

Pursuant to the response requested by the Florida Conference of AAA Motor Clubs, I have directed that Secretary Mueller of the Department of Transportation issue an order effective July 1, 1973, to remove these vehicles from the Florida turnpike. As you know, many companies have thousands of dollars tied up in this equipment, and it is my desire to give them adequate notice of the administrative action that will become effective next year so that they may have ample time to comply.

You will also be interested to know that I will ask the next regular session of the Florida Legislature to consider the current status of penalties for overweight violations of trucks and other vehicles on Florida's highways. It is obvious that our fares are

so low that many present users can pay penalties for being overweight and still operate at a profit.

With kind regards,

Sincerely,

Governor

ROA/spc

cc: Secretary of Transportation Ed Mueller

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